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No. 655

In the Supreme Court of the United States

OCTOBER TERM, 1957

DONG WING OTT AND DONG WING HAN, PETITIONERS

v.

JOHN L. MURFF, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, NEW YORK DISTRICT, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

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Petitioners are two Chinese natives who have been ordered excluded from the United States. They applied for a stay of deportation under Section 243 (h) of the Immigration and Nationality Act of 1952 on a claim that they would be subject to persecution if sent back to China. That application was denied on the ground that Section 243 (h) does not apply to excluded aliens (as distinguished from resident aliens ordered deported). Petitioners' action in the United States District Court for the Southern District of New York for declaratory judgment requiring the District Director to receive and consider their applications under Section 243 (h) was dismissed, 142 F.

Supp. 379. The order of dismissal was affirmed by the Second Circuit on appeal, 245 F. 2d 875 (Pet. App. 8), and the decision was affirmed on rehearing on September 11, 1957. 247 F. 2d 769 (Pet. App. 10). The petition for a writ of certiorari, filed December 10, 1957, seeks review of that judgment.

After the petition for a writ of certiorari was filed, the proceedings were held in abeyance in order to afford petitioners an opportunity to apply for continuation of parole under Section 212 (d) (5) of the 1952 Act, under which excluded aliens may, for emergent reasons in the public interest, be permitted to remain in this country. Such applications were made by petitioners and have been denied.

The issue presented by the petition for a writ of certiorari as to the applicability of Section 243 (h) to excluded aliens is the same as that now before this Court in *Leng May Ma* v. *Barber,* No. 105, certiorari granted, June 3, 1957, in which the Court of Appeals for the Ninth Circuit ruled in accord with the decision below (241 F. 2d 85) and *Quan* v. *Rogers,* No. 396, certiorari granted, October 28, 1957, in which the Court of Appeals for the District of Columbia Circuit reached a contrary conclusion (248 F. 2d 89). The respondent therefore does not oppose the grant of a writ of certiorari in this case as well.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

MARCH 1958.

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